

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

Terrell Suggs)
303 Lamon Drive)
Decatur, Morgan County, Alabama)

****Proposed****
ADMINISTRATIVE
ORDER NO: 16-_____ AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) Administrative Code of Regulations (hereinafter, “ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Department makes the following FINDINGS:

1. Terrell Suggs (hereinafter, “Mr. Suggs”) operates a lawn service in and around Decatur, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that “....open burning must take place on the property on which the combustible fuel originates.”

5. ADEM Admin. Code r. 335-3-3-.01(2)(d) prohibits the burning of cut vegetation from May 1 to October 31 annually in Morgan County, Alabama.

6. On April 11, 2014, an investigation of a complaint noted a burn pile of imported vegetation on Mr. Suggs property. Regulations were left with a family member of Mr. Suggs and later a verbal warning was given over the phone.

7. On December 17, 2014, another complaint about Mr. Suggs open burning was investigated and remnants of a burn pile were noted. No one was at home at the time of this visit.

8. On May 29, 2015 the Department verified from an onsite visit that illegal opening burning was again being conducted. This was during a burn ban for Morgan County.

9. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Mr. Suggs has continued to illegally open burn imported vegetation on his property for at least two years. He has also continued to burn after being warned verbally. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Mr. Suggs to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01(2)(b)1 and ADEM Admin. Code r. 335-3-3-.01(2)(d).

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Mr. Suggs likely derived economic benefit by not legally disposing of trimmings created in the normal operations of his business.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Mr. Suggs to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Mr. Suggs has been violating the State of Alabama Open Burning Regulations since at least April 2014.

F. THE ABILITY TO PAY: Mr. Suggs has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty herein is appropriate (See "Attachment A", which is hereby incorporated into these Findings). Based on mitigating factors discovered in written correspondence from Mr. Suggs in response to this Order proposal, the Department has reduced the penalty amount by \$2,000.00.

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Mr. Suggs shall pay to the Department a civil penalty in the amount of \$3,000.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environment Management by certified or cashier's check and shall be submitted to:

Office of General Counsel
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, Mr. Suggs shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01(2)(b)1.

C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. Except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve Mr. Suggs of its obligations to comply in the future with any permit or other written direction from the Department.

E. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Suggs for the violations cited herein.

F. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Mr. Suggs for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2016.

Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

ATTACHMENT A

Terrell Suggs
Decatur, Morgan County, Alabama

| Violation* | Number of Violations* | Seriousness of Violation & Base Penalty* | Standard of Care* | History of Previous Violations* |
|--------------------------------|------------------------------|---|--------------------------|--|
| Burning of Imported Vegetation | 3 | \$1,500 | \$1,000 | 0 |
| Burning during a burn ban | 2 | \$1,000 | \$500 | 0 |
| | | | | 0 |
| | | | | 0 |
| | | | | |
| Totals | | \$2,500 | \$1,500 | |

Economic Benefit \$1,000

Mitigating Factors

Ability to Pay

Other Factors -\$2,000

Civil Penalty **\$3,000.00**

** See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.*